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Supreme Court of the United States

October Term, 1976
No. 76-1406

LONA J. THORNTON,
GLEN E. MILLER,
Petitioners,

vs.

PERSONAL SERVICE INSURANCE CO.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

BRIEF OF RESPONDENT IN OPPOSITION

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BRIEF OF RESPONDENT IN OPPOSITION

Respondent, Personal Service Insurance Company, prays that petitioners' Petition for Writ of Certiorari to review the judgment and opinion of the Supreme Court of Ohio, dated December 22, 1976, and denial of a Motion for Rehearing, dated January 14, 1977, be dismissed and denied.

JURISDICTION

This Court does not have jurisdiction under Title 28, Section 1257(C) of the United States Code. Petitioner makes no claim that any statute of Ohio is repugnant to the Constitution, treaties or laws of the United States. Rule 19 of the Supreme Court Rules is not applicable as no federal question is involved.

SUPPLEMENT TO PETITIONERS' STATEMENT OF THE CASE

The State of Ohio, in common with a few other states, has provided that some evidence of protection to the public be filed with the state as a prerequisite to the return of a suspended driver's license. Ohio by statute, Section 4509.45, Ohio Revised Code, has provided several alternate means of complying with that requisite: a certificate of insurance; a certificate of deposit; a bond. (See Section 4509.45, Revised Code of Ohio, page 3 of the Petition.)

Glen Miller secured the return of his suspended driver's license by posting a Financial Responsibility Bond for the minimum amount required. While an occupant of his vehicle which was being driven by another, an accident occurred which led to suit by Lona Thornton against Miller and the driver of his automobile. After suit was filed, Lona Thornton refused to accept the bond amount and insisted upon going to trial which resulted in a joint judgment against Miller and the driver of his automobile, one Logan.

Lona Thornton entered into an agreement with Glen Miller not to pursue him for the judgment in return for his assignment to her of whatever rights he might have against the bonding company, Personal Service.

Lona Thornton and Glen Miller then commenced an action against Personal Service for alleged bad faith.

There are but a few cases involving Financial Responsibility Bonds and the trial court, and the Court of Appeals, evidently being unfamiliar with such bonds, adopted petitioners' theory that a bond and an insurance policy are the same. The law applying to insurance contracts, which are issued to protect the financial interests of an insured, was

applied to the bond which was issued to protect the public and respondent, because of the erroneous complication of such law, was found to be in bad faith.

The Supreme Court of Ohio recognized the difference in intent and purpose of a bond as opposed to a liability policy of insurance, and rendered judgment accordingly.

RESPONSE TO PETITIONERS' "REASONS FOR GRANTING THE WRIT" AND ARGUMENT

Response to Reason No. I

A liability policy of insurance ordinarily obligates an insurer to provide a defense for the insured without limitation as to the amount of the policy. The bond involved provided that the surety could defend the principal, but limited the obligation to defend to the extent or amount of the bond. When the petitioners refused to accept that sum and the sum was paid into court, the bonding company had complied with its undertaking or obligation to the public. Its agreement to defend to the extent of the bond was at an end.

Response to Reason No. II

The several states which have provided for the protection of its citizens by requiring financially irresponsible motorists to post Financial Responsibility Bonds have uniformly recognized the purpose and intent of such bonds and have applied the law of suretyship bonds to them.

"Purpose of the Motor Vehicle Financial Responsibility Act is the protection of the public against losses caused

by uninsured vehicles or from financially uninsured motorists."

Ohio Cas. Ins. Co. v. Armendariz, 36 Cal. Rptr. 274

Reserve Ins. v. Davis, 136 S.E.2d 469 (Ga.)

Motor Vehicle Cas. Co. v. Lemare Mutual, 116 N.W.2d 434 (Iowa)

Citizens Cas. v. Allied Mut., 144 A.2d 73 (Md.)

The law of suretyship is uniform throughout the states and there is no issue regarding such law which should be the concern of this Court.

Response to Reason No. III

There is no Constitutional nor substantial Federal question involved in the decision of the Ohio Supreme Court.

Response to Reason No. IV

Petitioners take the position that a judgment which has been appealed creates a vested interest in the monies represented by that judgment regardless of how erroneous that judgment might be.

As respondent has previously pointed out, the obligation of the surety to defend the principal extended only to the amount of the bond. This was what the principal had contracted for and received.

The surety reserved to itself *a* right to negotiate and settle as opposed to *the* right to negotiate and settle. The principal could have negotiated on his own at any time. He was not deprived of this right by the bond.

Petitioners and respondent were accorded due process by the courts of Ohio.

CONCLUSION

For the reasons set forth hereinabove, the respondent respectfully prays that the Petition for a Writ of Certiorari be dismissed and denied.

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